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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY DELGADO,

Defendant and Appellant.

E058263

(Super.Ct.No. FWV14455)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Patrick J. Hennessey, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Anthony Delgado challenges the trial court's order denying his petition for resentencing under Penal Code section 1170.126.¹ Defendant was convicted of petty theft with priors as a third striker in 1998. As discussed below, the trial court's order is affirmed.

PROCEDURAL BACKGROUND

On November 9, 1998, defendant was convicted of petty theft with priors (§ 666). The trial court found that defendant had two strike priors (§§ 1170.12, subd. (c)(2) & 667, subd. (e)(2)) and two prison priors (§ 667.5, subd. (b)). On December 16, 1998, the court denied defendant's *Romero*² motion and sentenced him to prison for two years plus 25 years to life.

On December 26, 2012, defendant filed a pro per petition for resentencing under section 1170.126. The court denied the petition on January 18, 2013, because one of defendant's prior strike convictions is for oral copulation by force or on a person under age 14 (§ 288a, subd. (c)) which disqualifies him from being treated as a second striker under section 1170.126. Defendant appealed from this decision.

Upon defendant's request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a

¹ All section references are to the Penal Code unless otherwise indicated.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

statement of the case and a summary of the facts, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

DISPOSITION

The trial court's order is affirmed.

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RAMIREZ

P. J.

We concur:

KING

J.

CODRINGTON

J.